



## Administrative Policies and Procedures: 2.2

### Subject: Court Advocate Program

Supersedes: DCS 2.2, 07/01/01

Local Policy: No

Local Procedures: No

Training Required: No

Approved by:

Effective date: 07/01/01

Revision date: 12/01/01

### Application

To All Department of Children's Services Employees.

**Authority:** TCA 37-5-106; 37-10-301 et seq.

### Policy

The Department of Children's Services shall provide court advocate services to minor youth under the age of eighteen (18) who choose to have an abortion but cannot obtain the consent of one parent or choose not to seek parental consent for the procedure. On a statewide level, the department shall provide a toll free telephone number to convey information on court advocate services and access to court advocates established in each county. Additionally, DCS shall develop, maintain and distribute a brochure that explains the court advocate services. Designated personnel shall be available in each county to provide information and services to help minor youth gain access to the court system to request a judicial bypass waiver of the parental consent law.

### Procedures

**A. Establishment of toll free telephone number**

DCS shall establish a toll free telephone number for the purpose of providing information on the parental consent law and the names and telephone numbers of the advocates in each county.

**B. Brochure**

1. DCS shall develop a brochure that explains the parental consent requirement and the process for obtaining a judicial bypass to waive the parental consent requirement.
2. DCS shall make these brochures available to all health care facilities that routinely perform abortions, local health departments, local courts, court advocates, and other agencies and/or facilities as needed and appropriate.

**C. Appointment of court advocates**

1. The Regional Administrator in each region shall ensure that there is a court advocate serving each county in the region at all times.
2. The Regional Administrator must ensure that persons appointed as court advocates do not have strong personal beliefs regarding abortion that would preclude her or him from performing the function of court advocate.
3. New court advocates shall receive the written training material, "A Guide for Court Advocates".

**D. Responsibilities of court advocates**

The court advocates shall:

1. Provide copies of the official brochure with the parental consent requirement/judicial bypass waiver information to clients;
2. Carefully explain each topic listed in the brochure to clients;
3. Offer opportunities for clients to ask questions;
4. Perform other duties as listed below if the young woman chooses to pursue a judicial by-pass.

**E. Pursuing the judicial bypass**

1. If a minor youth chooses to pursue the judicial bypass process, the court advocate shall arrange to meet with her at the court to help her file a petition requesting the judicial bypass.
2. Minor youth may file a petition in any Juvenile or General Sessions Court having juvenile court jurisdiction in any county in Tennessee. She is not limited to her home county court.
3. If a local court has already established a different protocol for filing these petitions, the court advocate may utilize the protocol established by the court, but must consult with regional DCS legal counsel if the procedure appears to delay or obstruct the process.
4. If the clerk's office does not have a copy of a draft petition for this purpose, the court advocate shall provide a blank petition form available through DCS legal staff. The court advocate may help the minor youth complete the form.

5. The court advocate shall advise the minor youth of her right to legal counsel to represent her in these proceedings and advise and remind the youth to request legal counsel at the time of filing out the petition.
6. The court shall provide Legal counsel to the youth at no cost to the youth.

**F. Important  
Exception to the  
Judicial By-pass  
requirement**

There is no need to pursue a judicial bypass if a criminal charge of incest is pending against a parent of the minor youth. Minor youth in this situation can proceed to obtain abortion services.

**G. Options  
counseling**

If a minor youth voices any concerns or difficulties in making a decision about her pregnancy, the court advocate shall refer her to the local health department or family planning center for counseling on her options.

**H. Court  
proceedings**

1. The court advocate shall attend the court hearing with the minor youth unless she or her attorney requests that the court advocate not attend. The court advocate shall coordinate with the young woman's legal counsel as necessary.
2. The court advocate shall not act in any way as a fact witness in any legal proceedings, nor as an advocate of any position with respect to the minor's decision to terminate her pregnancy.

**I. Pregnant minor  
youth in state  
custody**

1. If a minor youth in state custody becomes pregnant and chooses to pursue an abortion, the home county case manager for the minor youth shall discuss the possibility of obtaining consent for abortion from one of her parents.
2. If the minor youth's parent(s) do not grant consent, are not available for consent, or she chooses not to ask her parents for consent, the minor youth shall be referred to the court advocate so that she may learn about her right to pursue a judicial bypass if she chooses.
3. The home county case manager or other designated DCS staff may provide transportation to medical and court appointments.

**J. Pregnant minor  
youth in  
guardianship**

1. If a minor youth in guardianship becomes pregnant and chooses to pursue an abortion, she shall be referred to the court advocate who can inform her of the judicial by-pass procedures.

2. If the young woman chooses to pursue an abortion, the court advocate may provide help and support as stated in **Section E** above.
3. DCS staff may provide transportation for medical and court appointments for the minor youth.

**K. Travel for minors not in state custody**

1. DCS **shall not** provide travel to medical appointments or for court activities for minor youth who are not in state custody.
2. The home county case manager or other DCS employee may transport custodial minor youth for these purposes.

**L. Payment**

1. DCS **shall not** provide payment for abortion services. This applies to all minor youth in state custody and those who are not. Generally, minors who choose to have an abortion must provide their own funds or obtain financial assistance from other sources.
2. In some highly specialized circumstances, TennCare may pay for an abortion. A minor youth who is TennCare eligible may seek TennCare coverage for the procedure when the youth has obtained parental consent or a court order granting a judicial bypass (unless the exception in Section F. above applies), **and one of the following conditions exists:**
  - a) A physician has certified in writing that, on the basis of his or her professional judgment, the life of the mother would be endangered if the fetus were carried to term. The certification must be accomplished by proper completion of a *Certification of Medical Necessity for Abortion – Mother's Life, form TDH-604*, signed by the physician in his/her own original handwriting; **or**
  - b) A law enforcement or health authority other than one who performs abortions certifies that the youth was the victim of rape (including statutory rape as defined in Tennessee Code Annotated §39-13-506) or incest.
3. The Nurse in the Regional TennCare Health Unit may provide further information on accessing TennCare for this purpose.

**M. Confidentiality**

The Court Advocate shall not release the name of any minor youth who seeks help in obtaining a judicial bypass for the purpose of obtaining an abortion. The court advocate shall take all necessary, reasonable and customary precautions to ensure confidentiality of the youth and ensure that this information is shared only as necessary with local case

managers and is kept from the general public.

**N. Documentation**

1. Court advocates are not required to document their activities while acting as a court advocate.
2. For non-custodial minor youth, these cases shall not be entered into TN Kids and no case file shall be established.
3. For custodial minor youth and those in guardianship, the case file may state that court advocate services were provided and may give the outcomes of the process. This is permissible since DCS files are confidential.
4. Court advocates shall notify the Central Office Program Director for Program Operations, Non-Custodial Services when these cases arise. This notification shall be by e-mail and shall not contain any names or identifying information.
5. The communication shall include:
  - a) A request for court advocacy services was received;
  - b) Actions taken in response to the request;
  - c) What, if any, appeals were necessary; and
  - d) The outcome.

**Forms**

None

**Collateral Documents**

*Judicial By-Pass Petition – (Available through DCS Legal Services)*

*A Guide for Court Advocates*

**Standards**

None